International Union of Operating Engineers
LOCALS 542, 542-RA, 542-C, 542-D
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July 6th, 2012

Lester Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington, DC. 20570-0001

RE: **Hanson Aggregates BMC, Inc. *and* International Union of Operating Engineers, Local 542, AFL–CIO.**
Cases 4–CA–33330, 4–CA–33508, 4–CA–33547, 4–CA–34290, 4–CA–34362, 4–CA–34363,and 4–CA–34378

Dear Mr. Heltzer:

I am writing to appeal the General Counsel's denial of the Charging Party's appeal and closing the above caption Cases which are being closed on compliance. I am specifically appealing the Employer's failure to comply with every part of the Board's Order and the Region's failure to enforce the Board's Order in its entirety.

In reply of June 26th Appeal denial for the General Counsel, the person who wrote the denial and stated ***'Region request for written confirmation was appropriate***" I will clearly illustrated that this was done **repeatedly** throughout the course of 2008 and through the Regional Director closing of the above Cases!

The Board's Decision in this matter stated that among other things "on request, rescind the change to terms and conditions of employment unilaterally

implemented on October 24, 2005 and January 1, 2006". Hanson Aggregates BMC, Inc., 353 N.L.R.B. 287, 290 (N.L.R.B. 2008). This has never been done by the Employer, even though the union has to the state of nausea informed the employer since **October 2008** to restore all conditions of employment to October 2005 and ongoing.

Counsel for General Counsel, improperly insists that the Union request in writing that the Employer rescind its wage increases when she wanted to close compliance in 2011. This should not have been asked, for reason that she demanded this in **March of 2010 by way of Affidavit**. The Union on numerous occasions, both in writing and repeatedly at the bargaining table, has **demanded** that the Employer comply **in total** with the Board's September 30, 2008, Decision and again **restore everything**! The Administrative Law Judge held and the Board affirmed, the Employer should rescind all illegally implemented terms and conditions of employment that it instituted after having declared impasse improperly. Instead of complying with the Board's order, the Employer picked and chose which parts of the Boards Order it wanted to comply with which was permitted by the Region and not as directed in the Board Order.

I am unable to determine all the parts of the Boards order they chose to comply with as they have not given me information in this regard, nor have they informed me of what they chose to comply with.

The crux of this matter is what conditions of employment, including wages are to be restored to the previous levels prior to the Employer's improper implementation of their last, best, and final offer. The Administrative Law Judge ruled, and the Board affirmed that upon request all conditions of employment should be rescinded. Region 4 insisting again that the Charging Party seek this request in writing, is merely a tactic by the Employer tweaking the Regional Director nose and her allowing for it. The Regional Director has an Affidavit in hand which should and only be the tool needed for Compliance.

While the Union feels placing in writing again, to the Employer of its demand on wage recession, the Union did conform again in a modified letter regarding this to the Employer (see Exhibit 5) but then told by the Region it was too late! The Region to place time associations to any matter of this regard is humorous at best as I will further illustrate in this Appeal.

First, the Union has felt that the need to place in writing to the Employer directly for wages recession was not necessary since the Employer insisted that they would not conform to the Unions demands, but would only conform to what was specially ordered by the Region.

Regardless of the fact, the Union in Exhibit 5 did place in writing to the Employer what the Regional Director instructed the union to do and then was told by the Region it was too late.

The Region sat on a Federal Court Order to comply with the above caption Cases for **over 2 years**! The Region also through its Compliance Officer directed the Union to place the Union desires in an affidavit which the union did. I will note; a time of March 2010 after the Court issued it Order of Enforcement.

The Region was derelict its duties of non-conformity once the Affidavit was signed giving the Region the direction of the Union. Since the Federal Court Order was in Force, it is Contemptible by Counsel for General Counsel not to force the hand of the Employer once the Affidavit was given!

The Confidential Affidavit is set forth in a witness to Region 4 which General Counsel has access. Further correspondence of the Unions demands in this regard to comply to the Board Order, can be found at the bargaining table and by letter of October 8, 2008 addressed to Counsel of the Employer Karl Fritton. In that letter ***"Local 542 further demands the Employer rescind the changes to the terms and conditions of employment, unilaterally implemented by the Employer on October 24, 2005 and continuing, as referenced in paragraph 2b of the Board's Order***." (Exhibit 1) On December 24, 2008 during bargaining I again reiterated that I wanted all changes be rescinded and restored and reiterated that I made that request in October. (See Frank Bankard bargaining notes Exhibit 2, irrelevant parts redacted) This demand that they implement the Board's Decision in its entirety was reiterated many times. In addition, on July 9th, in response to a question from Jeff Carey, chief negotiator, for the Employer, he asked when do you want the wages restored to the 2005 base? **I replied what about this afternoon**? This was stated twice, that the Union wanted the wages restored to the 2005 level. This occurred once again on January 11 when I asked if the pay scales had been restored and he replied no, but we will comply with the Board Order. My continuing question to Jeff Carey was when? And his continuing answers was when the Region tells them to do it. Again why was this not done by the Region?

I also sought that the conditions all be restored to 2005 levels in a March 20 2009, (Exhibit 3) and November 15, 2011 (Exhibit 4) letters to Jeff Carey (and reiterated this in an Affidavit to the Region dated March 16, 2010, (Exhibit 5). In March 20th letter, **No. 11 states restore all Policies**. The Skill Point Policy has never been restored!!!! Simply, it does not matter what the Union informs the Employer to do, since inception/certification, the Employer has acted like a rogue, committed dozen of unfair labor practices or simply crapped on the Union!

A perfect example the Employer picking and choosing which parts of the Board's decision to implement is its position on restoring the Skill Points which the Employer has not paid since 2005, and which the Employer claims to the Region Compliance Officer, the improperly implemented raises exceed the Skill Points **of the majority** of employees would have received. Skill Points are a policy in which every time an employee learns a new skill, procedure or attend a class, he or she receives .07 cents per hour. This practice was illegally ended by the Employer and it chose, over the Union's objections not to restore this. Region 4 Compliance Officer feels that the majority of the unit faired better with the Employers illegal pay increases rather than the Skill points. First, that is not for her discretion for Compliance, only for back wage calculation! Nowhere in the Board Order does it imply if illegal implemented parts benefit the employee, they should stand! The Board order is specific to restore upon the Union request, which is painfully clear the demand to restore everything. The Compliance Officer is further unaware of the dynamics and specifics of the Skill Points Policy, which the union is not! Regardless, this is not her decision or the Region. Both have a duty to follow the Order of the Court and the Board!

We believe in speaking with the unit, the majority of our unit would benefit financially more if wages were rescinded and Skill Points restored from 2005 to present. More importantly, the Employer, with the Regions *imprimatur,* has been allowed to pick and choose what it wants to implement.

This failure to enforce the Board's Order has caused financial harm to our unit and eroded support for the Union. If the Region's Compliance Officer would have fulfilled her duties under the Act and Federal Order, our unit would have received Skill Points from 2005 through today. But this is not the case! Our unit has been in limbo and wages frozen during this Compliance investigation and currently. This in itself is a derogation of the Board's mandate and erodes support for the Union. Today, no skill points have been awarded causing employees to question the efficacy of the Union. This is a far cry from the Act's purpose and ignores the Board order of 2008 which Counsel for General Counsel is obligated to serve.

One of the most important aspects to this Case or non-conformity by the Region and General Counsel is that a third of the Unit did not get any illegal pay increase like two thirds did. A third only received a onetime lump sum payment! In simple terms, a third of the unit wages have not moved one cent from 2004!

Region 4 and the Employer are engaging in gamesmanship, trying to trap the Union into making a written statement which will be craftily abstracted and used in organizing campaigns and the pending decertification election. The Union should not have to place what they demand in writing to the Employer especially when they postured their position to only comply as specifically directed by the Region! That said and with the affidavit to the Region, notes,

and letters, the Employer has not complied with the Board's Order therefore compliance in this matter should not be closed.

The Board's order clearly states on request, rescind the change to terms and conditions of employment unilaterally implemented on October 24, 2005 and January 1, 2006". Again, this demand has occurred repeatedly by the Union and first occurrence can be found within 24 hours after the Order became Public.

There is nothing in the Order regarding that any request be explicitly in writing. In any event, the Union made the request and did so in writing upon the Regional Director insistence of a Affidavit in 2010 and again in writing in 2011. Therefore, the Region's failure to enforce the Board's Order, in full, fails to put the Employer in compliance with the Order but more so with the Federal Court Order.

The Regions interest lies not with the Employer or the Union. The Regions interest relies in the enforcement of the Act and its duty of an Officer of the Court to enforce a Court Order! Placing roadblocks in the enforcement of this Order, flies in the face of the Act and the Court! The Order, has been signed and enforced now for years by the Federal Court but the Region allows the Employer to take it sweet time to comply, or more so not comply! Example; the Employer discontinued a Certified Pension Plan which the Region told the Employer they needed to restore. This took understandably an amount of time to comply with. But the union further demanded that Skill points be restored and wages which is simple a mechanism to do and instead of the Region fulfilling it fiducially duties, the Compliance Officer pursued her own agenda, not the Unions demand.

Instead of the Region refuses to perform its lawful duties to enforce the Board Order, the Region requested an affidavit by me on the particular rescission of wages and restoring Skill Points which I have complied with. Undisputedly in that Affidavit, the Unions position was clear to restore wages and restore the Skill Points. The Compliance Officer demanded the Union to give an Affidavit on this matter which took time and expense, then placed her own agenda or belief that the 'majority of the unit raises exceed skill points which would have been earned. Again, this is not for her choosing, and disregards the integrity of the Affidavit, the Court the Board of 2008!

I find it ever so peculiar that during the Region time frame of closing these Cases, a **Merit** finding by the Region was found in Case 04-CA-069822 which the Employer, again, set wages without bargaining with the Union. Simply, the Employer continues to spit in the face of the Union, while Region supplies a fountain to the Employer.

Accordingly, the Charging Party, International Union of Operating Engineers, Local 542 believes that the Employer is not in compliance and this Case should not be closed. I further want to place emphasis that when the Region in 2011 again wanted the Union to place in writing to the Employer to rescind the wage increases, the Union sent the new Compliance Officer the Affidavit of March 2010 and instructed the new Compliance Officer to follow with the Union direction as spelled out in that Affidavit of March 2010. There was no further need for the Union to communicate with the Employer on this matter since the Union directed the enforcing agency (Region 4) of what the Union wanted for Compliance. Furthermore the position of the Employer was not to conform to the Unions demands from 2008 to present, only the Region! Why would the need for the Union to spell out to the employer 3 years later what they were asking for, for three years???????

Closing these Cases with an Affidavit signed by the Union instructing Counsel for General Counsel, mocks the integrity of the entire Affidavit process of this Agency. And may set new standards if this Board does not remand these Cases back to the Region for Compliance as directed in the Affidavit demanded by the Regional Director for path of compliance.

Thank you very much for your attention in this matter.

Very truly yours,

Frank Bankard
International Union of Operating
Engineers, Local 542

Cc: Dorothy Moore-Duncan, Esquire
Jonathan Nadler, Esquire